

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NORTHEAST UTILITIES SERVICE)	FCC File No. 0003064076
COMPANY)	
)	
and)	
)	
AMTS CONSORTIUM, LLC)	FCC File No. 0003064601
)	
Request for Waiver of Section 80.479(b))	

ORDER

Adopted: December 3, 2007

Released: December 4, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 8, 2007, Northeast Utilities Service Company (NUSCO) and AMTS Consortium, LLC (ACL) jointly filed a request for waiver of Section 80.479(b) of the Commission's Rules to place a condition on the licenses for Automated Maritime Telecommunications System (AMTS) Stations WQCP810 and WQJ718 limiting the authorized field strength on certain frequencies at the border between the licenses' geographic areas.¹ For reasons set forth below, we deny the waiver request.

2. *Background.* In 2005, ACL was granted the license for the Channel Block B license for the Northern Atlantic AMTS region under Call Sign WQCP810. ACL then partitioned and disaggregated to NUSCO the entire forty-channel block in New Hampshire, western Massachusetts, and part of eastern Connecticut; and twenty-eight of the forty channels in parts of New Haven, Litchfield, and Fairfield Counties, Connecticut,² and NUSCO was assigned Call Sign WQJ718.

3. On June 8, 2007, NUSCO and ACL filed the above-captioned applications seeking various modifications to their licenses. In conjunction with those applications, each licensee filed a joint request for waiver, asking that a special condition be placed on each license limiting NUSCO and ACL to a lower field strength at the border between Stations WQCP810 and WQJ718 than the limit set forth in Section 80.479(b) of the Commission's Rules,³ which provides that AMTS geographic licensees may not exceed a predicted 38 dBu field strength at the geographic area border, unless all affected co-channel licensees agree to a higher field strength.⁴

4. *Discussion.* Based on the record before us, we believe that NUSCO and ACL have not made the requisite showing for grant of a waiver.⁵ The parties argue that granting the instant waiver request will "greatly increase efficiency and utilization of the subject entire AMTS B-Block spectrum along the

¹ Request for Partial Waiver of Section 80.479(b) and Related Placement of Special Conditions on Licenses (filed June 8, 2007) (Waiver Request).

² See AMTS Consortium, LLC, *Order*, 20 FCC Rcd 17975 (WTB PSCID 2005).

³ See 47 C.F.R. § 80.479(b).

⁴ See Waiver Request at 4-7. See *id.* at Ex. 1 (describing the areas, frequencies, and requested power limits).

⁵ 47 C.F.R. § 1.925(b)(3); see also *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

extensive multi-state Borders.”⁶ They also contend⁷ that the instant waiver request is consistent with a recent order⁸ granting a request for imposition of special conditions on the VHF Public Coast geographic licenses of MariTEL Southern Pacific, Inc. (MariTEL) and Warren C. Havens permitting a higher field strength at the border between their licenses’ geographic areas than the limit set forth in Section 80.773(c) of the Commission’s Rules.⁹

5. We disagree. In that case, the parties sought imposition of special conditions permitting them to exceed the field strength set forth in the rules, while NUSCO and ACL seek imposition of a lower power limit. No Commission action is required for geographic area licensees to operate with less power than the rules permit.¹⁰ In addition, while Section 80.773(c), like Section 80.479(b), permits affected co-channel licensees to agree to a higher field strength at the geographic area border, we note that the MariTEL license was subject to a pending proceeding that could have resulted in termination of the license.¹¹ The grant of that waiver request was intended to protect each party’s right to continue to operate with the agreed higher signal strength even if the other party were to lose its authorization.¹² There is no suggestion that the present matter involves similar circumstances. Moreover, the termination of one of the instant licenses would leave the remaining licensee free to continue to use a lower field strength than the limit in the rule. We therefore conclude that no Commission action memorializing the agreement between NUSCO and ACL is appropriate.¹³ Consequently, we deny the waiver request.

6. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, the request for waiver filed by Northeast Utilities Service Company and AMTS Consortium LLC on June 8, 2007 IS DENIED, and applications FCC File Nos. 0003064076 and 0003064601 SHALL BE PROCESSED in accordance with this *Order* and the Commission’s Rules.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁶ See Waiver Request at 4.

⁷ *Id.* at 5-8.

⁸ See MariTEL Southern Pacific, Inc., *Order*, 22 FCC Rcd 1270 (WTB MD 2007) (*VPC Agreement Order*); see also County of Placer, California, *Order*, 20 FCC Rcd 3657 (WTB PSCID 2005) (related assignment).

⁹ See 47 C.F.R. § 80.773(c).

¹⁰ See Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21057 ¶ 63 (1998).

¹¹ See MariTEL, Inc., *Memorandum Opinion and Order*, 22 FCC Rcd 14074 (2007) (denying application for review of grant to MariTEL of construction extension).

¹² See *VPC Agreement Order*, 22 FCC Rcd at 1273 ¶ 6.

¹³ See, e.g., Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 00-230, 18 FCC Rcd 20604, 20678 n.360 (2003) (“We note that the Commission does not intend to become involved in private contractual disputes between the parties, consistent with our usual practice.”).